

**(2019) 08 CHH CK 0021**

**Chhattisgarh High Court**

**Case No:** MA No. 838 Of 2003

Bharat Aluminium Company Ltd.

APPELLANT

Vs

Laxmi Transport

RESPONDENT

**Date of Decision:** Aug. 2, 2019

**Acts Referred:**

- Arbitration Act, 1940 - Section 30, 33, 39

**Hon'ble Judges:** Ram Prasanna Sharma, J

**Bench:** Single Bench

**Advocate:** Sudeep Agrawal, Atanu Ghosh

**Final Decision:** Dismissed

### **Judgement**

Ram Prasanna Sharma, J

1) This appeal is preferred under Section 39 of the Arbitration Act, 1940 against the order dated 30-6-2003 passed by Second Additional District,

Judge Korba, in case No. 4-A/2002 wherein the said court awarded the amount in favour of respondent to the tune of Rs.1,39,760/- with interest.

2) Appellant awarded annual rate contract to the respondent for transportation of 4 numbers of rectifiers from Bharat Aluminium Co. (BALCO)

Korba to Bharat Heavy Electricals Limited (BHEL) Jhansi and back under tender No. AV/CCE/E/91-92/88 dated 30-3- 1993 on terms and conditions

as contained in tender notice, instructions to tenderers, special terms and conditions of contract, letter of acceptance, general conditions of contract

and all other documents forming part of the contract. The contract among other terms contained a clause for settlement of disputes between the

parties through arbitration. The purpose of transportation of rectifier transformers was for their repairs at BHEL, Jhansi during the currency of the contract. Looking to the size and weight of these rectifiers, their transportation by road was possible by truck/trailor having minimum load bearing capacity of 50 tonnes or more. As per condition 14 of the contract, appellant does not guarantee any specific quantity of regular flow of work and the work involved either partially/fully be stopped/decreased or increased and the contractor will have to maintain the labour force accordingly without causing any interruption/stoppages of work so assigned. BALCO will not pay any idle labour charges. BALCO had also reserved the right to reduce the number of trips without any reason. It so happened during the contract period no rectifiers developed any defect which would call for their repairs at BHEL's work shop, Jhansi and therefore, the appellant could not make any rectifier available to the respondent for transportation.

3) The respondent submitted its tender claiming itself to be highly reputed firm owing several cranes, heavy motor vehicles, heavy trailers, road rollers etc., with experience of transportation of heavy machineries. The respondent claimed that as it was not provided rectifier for transportation, he treated it as breach of contract and claimed for damages. The matter was referred to Arbitration. Shri SS Shrimalai and Shri C.L. Rawal, the officers of BALCO were appointed as Arbitrators. The arbitrators awarded Rs.1,39,760/- towards idling and equipments including heavy duty trailers and man-power. They further awarded Rs.33,552/- towards interest @ 12% per annum, thus total amount comes to Rs.1,73,302/-. The appellant filed an application under Section 30/33 of the Arbitration Act, 1940 before the Court of Additional District Judge to get the award set aside, but same was rejected that is why this appeal is preferred.

4) Learned counsel for the appellant would submit as under:

- i) As per clause 14 of the agreement, there is specific clause that BALCO will not pay for idling charges but same is awarded and grant of 20% solatium by the arbitrator is without any material on record and same is against the agreement of the parties.
- ii) As per work order dated 31-8-1992, BALCO reserved right to reduce the work and there is no evidence regarding keeping trailer or labour in the

site, therefore, finding of the trial court is not liable to be sustained.

5) On the other hand, learned counsel for respondent would submit that as per letter dated 28-2-1994 the respondent has informed the company that

he has purchased one heavy trailer for purpose of contract, therefore, company cannot go beyond its obligation under the garb of any clause of contract.

6) I have heard learned counsel for the parties and perused the record in which judgment and decree has been passed.

7) The point for consideration of this court is whether the finding arrived at by the trial court is proper or not. As per terms of agreement, respondent

was required to make available trailer within seven days of the order, otherwise, he was liable to pay penalty @ 1% per day of transportation charges.

From the evidence it is clear that one Hippo trailer was purchased by the respondent as per terms of the agreement and technical staff was also

maintained by him for conduction of Hippo trailer. Though contract was entered into for one year, but from the record it is established that contract

was terminated in the month of April 1994, therefore, maintaining the trailer in view of contract was basic requirement and for conduction of that staff

was also maintained which was basic requirement of the contract, therefore, argument advanced on behalf of the appellant that they are not

responsible for any idling charges is not sustainable.

8) Again, no one challenged the validity of the arbitrators during arbitration proceedings, therefore, appellant cannot be allowed to say that one

arbitrator was retired before passing of award. One Shri C.L. Rawal was retired on 30-4-1996 and award was passed after 3 days of his retirement

i.e., on 3-5-1996. When said arbitrator heard the case fully, he was under obligation to pass an award, therefore, this argument has no substance that

one arbitrator was retired on the date of passing of award. All the conditions would have been applied when work would have been allowed to

respondent, but in the present case, respondent was waiting for allotment of work i.e., transportation of rectifiers after maintaining technical staff,

but no rectifier was supplied to him for transportation.

9) Looking to the entire facts and circumstances of the case, Arbitrator awarded 20% of awarded amount as compensation which cannot be termed

as harsh, disproportionate or unreasonable. Award of 12% interest is also not unreasonable from the date of termination of contract to the date of award.

10) In view of the above, the finding arrived at by the trial Court is proper and same is not liable to be interfered with because this court has no reason to take a contrary view what is recorded by the trial Court. Accordingly, the appeal is liable to be and is hereby dismissed.